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**Khan, O.P.**

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# Introducing a gender-sensitive approach to pre-trial assessment and probation:

Evaluation of an innovation in Kenya

Omar Phoenix Khan

University of Westminster

## Abstract

This paper evaluates a pioneering project to introduce a gender-sensitive approach to working with women completing probation orders and community service orders in Kenya. The intervention consisted of context specific research with women throughout Kenya, leading to adaptations to existing probation tools, followed by pilot implementation of a gender-sensitive approach. The evaluation explores the relevance, effectiveness and sustainability of the intervention and presents opinions of implementing probation officers and sector experts. Findings suggest that the project genuinely broke new ground in terms of research on gender-sensitivity and quality of pretrial reporting for women. Close adherence to the UN Bangkok Rules means the model and lessons are applicable both domestically and globally.

## Keywords

Gender-Sensitive, Probation, Community Service, Pretrial, Presentence Report, Non-custodial sentences, Evaluation, Kenya, Bangkok Rules

## Acknowledgements

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## Background

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules') were adopted in 2010 (UN General Assembly, 2010). Until this point, there had been a clear absence of standards providing for the specific characteristics and needs of women offenders and prisoners. The Bangkok Rules were adopted in recognition that criminal justice systems and the codes that govern them were designed with male offenders in mind and that the typical characteristics, roles and backgrounds of women offenders, need to be taken into consideration.

This need for consideration is made all the more stark with the exponential rate at which the female prison population is increasing worldwide. The female imprisonment rate has increased on every continent and has been increasing at a higher rate than both the male imprisonment rate and national population levels. Between 2000 and 2016, the global population increased by approximately 21%, while the female prison population (including both women and girls) increased by 53%, with the total number now exceeding 714,000 (Walmsley, 2017).

Research on the background of female offenders has highlighted typical characteristics, such as that carried out by Bloom, Owen and Covington (2003), who found:

‘[A] female offender is more likely to have been the primary caretaker of young children at the time of arrest, more likely to have experienced physical and/or sexual abuse, and more likely to have distinctive physical and mental health needs. Additionally, women are far less likely to be convicted of violent offenses, and they pose less danger to the community’ (Bloom, Owen and Covington, 2003).

The clear majority of the efforts to operationalise this knowledge and the Bangkok Rules guidance has focused on the experience of women in custody, leading to an absence of focus on non-custodial situations. Further development is therefore required of a gender-sensitive design for non-custodial measures that considers the background of women, as well as their current circumstances, such as pregnancy, being a mother or having other caretaking responsibilities, their employment status, their place of residency and whether they have any support from family.

The Bangkok Rules call for ‘gender-sensitive non-custodial measures’ (in particular Rules 57, 58, 60, 62), recognising the history of victimisation of women offenders and their caretaking responsibilities, including the harmful impact of prison on children. However, little research and good practice is available on how to capture gender-specific information or to guide gender-specific design and implementation of non-custodial measures.

### **Kenyan context**

An agenda to improve women’s access and participation in society is well established in Kenya, and quotas exist in various forms, including a constitutional obligation to ensure at least a one-third parliament representation for women<sup>1</sup> (The Constitution of Kenya, 2010).

In a recent and otherwise comprehensive study of gender-mainstreaming within Kenya, Frosina and Mwaura (2016) scrutinise areas including, social, health and economic status, political environment, access to resources and decision making; yet do not discuss the criminal justice system. The Africa Gender Equality Index (2015), compiled by the African Development Bank Group, rank Kenya as 14<sup>th</sup> among 52 active countries with available data. The index does include an assessment of ‘Equality Before the Law’ (p.23), yet this focuses mainly on economic or household rights and constitutional equality, rather than access to justice and treatment.

The overall prison population has been rising steadily in Kenya since 2008 and the imprisonment rate per 100,000 has fluctuated between 118 and 122, with the current population total now just below 54,000 (ICPR, 2016). The number of women imprisoned in Kenya increased from 1,496 in 2001 to 3,762 in 2016, which equates to a change from representing 4.2% of the overall prison population, to 7.4% (Walmsley, 2017).

While the prison population has been increasing, there have also been high profile political statements made to encourage the use of non-custodial sentences. For example, in 2016, President Kenyatta expressed backing for the greater use of non-custodial sentences and stated:

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<sup>1</sup> Article 81 (b) of the Constitution states that ‘not more than two-thirds of the members of elective public bodies shall be of the same gender’.

‘One such programme, if I may, already operates: it is the scheme under which inmates work outside the walls of our prisons, serving the nation. It seems to me that these programs should be encouraged, not simply to rehabilitate our inmates, but also to make certain that public works do not remain undone for lack of labour’ (The Presidency, 2016).

The number of non-custodial sentences, (a combination of probation orders and community service orders [CSOs]) have also been rising. The total number increased from 38,585 in 2013 to 51,604 in 2015 (PRI, 2016a). During this period, the female share of the probation orders actually saw a small fall from 2,280 in 2013 to 2,214 in 2015 (PRI, 2016a). The number of women serving CSOs over the same period saw a clear increase from 4,784 to 6,887 PRI, 2016a), yet ‘one-day’ CSOs accounted for a significant portion of this number. These very short orders have been criticised as they leave little time for any meaningful rehabilitative work to be completed. They are also often ordered to be completed the same day, meaning that mothers, who may have travelled some distance to come to court, are then forced to be away from infants for much longer periods than expected, or to work outside the whole day with their baby.

With the increase of the number of women receiving sentences and the increased desire for non-custodial sentences, combined with the need for space, with the prison system running over 200% capacity (ICPR, 2016), there is a clear need to examine the specific experience of women completing community-based sentences.

## A gender-sensitive approach

Rule One of the Bangkok Rules states, as a basic principle:

‘In order for the principle of non-discrimination, embodied in rule 6 of the Standard Minimum Rules for the Treatment of Prisoners to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules. Providing for such needs in order to accomplish substantial gender equality shall not be regarded as discriminatory’ (UN Assembly, 2010).

The approach taken to achieve the provision for the distinctive needs of women has been described as a gender-sensitive or ‘gender responsive’ approach (Van Voorhis, 2016). I have used the term ‘gender-sensitive’ in order to maintain consistency with Penal Reform International (PRI) and the Kenya Probation and Aftercare Service (KPAS), who designed the project. They in-turn have based their interpretation of the concept on the definition used by the National Resource Centre on Justice Involved Women (NRCJI), due to its specificity to justice systems:

‘Gender responsive practices are practices, programs, assessments, or policies that account for the differences in characteristics and life experiences that women and men bring to the justice system AND that have been tested by methodologically rigorous research and found to be effective in reducing recidivism’ (Van Voorhis, 2016).

Drawing on feminist epistemologists Hochfeld and Bassadien, who argue that truth is ‘shaped by our social conditions, and that the idea of value-free knowledge is a false construct, biased towards the male experience of the world’ (2007, p221); I take the standpoint that our experience of justice is shaped by our social conditions, and the idea of value-free judgement is a false construct, biased towards the male experience of the criminal justice system. At the crux of my interpretation of a gender-sensitive approach is the key

notion that treating everyone the same, is not the same as treating everyone equally. When there is a clear normative experience of a process, whether as the result of bias or a developed habitual custom, those who do not fit the expected template either receive a poorer experience of that process, or the process is malleable enough to be adapted to acknowledge their particular needs, thus a gender-sensitive approach. In the context of criminal justice, the UN Bangkok Rules acknowledge ‘the fact that many existing prison facilities worldwide were designed primarily for male prisoners’ (UN General Assembly, 2010) and this paper examines one attempt to readdress that balance.

## Project structure

The overall project was commissioned by the Thailand Institute of Justice (TIJ), considered world leaders in terms of advocating for women’s rights, and who’s primary objectives are to promote the implementation of the UN Bangkok Rules as well as other relevant UN standards and norms. Kenya Probation and Aftercare Service (KPAS) in partnership with Penal Reform International, designed and implemented the project. I was commissioned as a consultant to complete the evaluation to satisfy the project process and therefore wrote and structured the report according to donor specifications. This paper repurposes the findings of the evaluation for academic purposes.

The overall project objective was to ‘develop and pilot gender-sensitive CSOs and probation orders based on evidence and consultation with women offenders’. The project was arranged into four distinct phases. The evaluation constitutes the third phase and assesses the initial two phases:

Phase One: Context specific research was completed to examine the experiences of women completing community-based sanctions and the challenges that they face, as well as the experiences of those working within this context. The results were then described in a Research Report<sup>2</sup> and a Short Film<sup>3</sup>.

Phase Two: Established probation tools and guidelines for carrying out pretrial assessment were amended to improve gender-sensitivity, in accordance with the recommendations from the Research Report. Training was developed and carried out by senior KPAS staff with client facing probation staff in two pilot locations of Nakuru and Kisumu.

Phase Three: An evaluation of the first two phases was completed, including both desk based research and on-location interviews with probation officers implementing the new tools. Analysis focused on the relevance, effectiveness and sustainability of the project activities in the eyes of relevant stakeholders and participants. The evaluation<sup>4</sup> which I completed in this phase led to the findings on which this paper is based.

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<sup>2</sup> PRI (2016a) Community Service and Probation for Women. A study in Kenya: Penal Reform International. Referred to as ‘Research Report’ throughout this paper and available at: <https://www.penalreform.org/wp-content/uploads/2016/09/PRI-Kenya-women-prisoners-report-WEB.pdf>

<sup>3</sup> PRI (2016b) Equal Justice: Making community service work for women in Kenya. Referred to as ‘Short Film’ throughout this paper and available at <https://www.penalreform.org/resource/equal-justice-making-community-sanctions-work-women-kenya/>

<sup>4</sup> For more information on all stages and for the evaluation document produced for the project, see: <https://www.justicefocus.org/gender-sensitivity/>

Phase Four: This phase will constitute the finalisation of all the adapted tools and guidelines after any further amendments are made as a result of recommendations from the evaluation.

## Methodology

The evaluation consisted of an initial desk-based review of the Research Report, Short Film and relevant gender-sensitive literature, followed by semi-structured interviews with probation officers implementing the amended tools, with senior probation staff managing the project and with international technical experts able to place the project in the overall thematic landscape. I also held several meetings with PRI staff managing the project and communicated with them throughout the evaluation.

### Location

Probation officers were located in two pilot regions of Kisumu (including Maseno, Winam, Muhoroni and Kisumu Probation Stations) and Nakuru (including Nakuru, Molo and Naivasha Probation Stations). The locations were chosen for their good logistical access for both the implementation and evaluation teams and as both contain a mixture of urban and rural areas.

### Interviews

A series of semi-structured interviews and focus groups were conducted, based around three key themes. Firstly, 'relevance', in terms of the need for an investigation into gender-sensitivity or amendments to probation tools, both in the Kenyan context and internationally. Secondly, 'effectiveness', of the resources created, the tools amended tools, the training delivered and of the application of the new approach in the pilot regions. Thirdly, 'sustainability' of the project; whether the resources will be useful for an extended period of time, whether probation staff would continue with the adaptations after the pilot phase and if any changes to the approach needed to be made. Direct quotes are taken from these interviews and focus groups.

Interviewees included representatives of the Thailand Institute of Justice (TIJ), KPAS (Management Team), United Nations Office on Drugs and Crime (UNODC) (Vienna and Nairobi Teams), Swedish Prison and Probation Service (SPPS) (also implementing a project with KPAS), Research Report Research Team (Kenya-based researchers), The judiciary (a judge and several magistrates), Field-based Probation Teams (Regional Probation Director, Country Probation Directors, station-based probation officers).

### Statistics

In order to assess an aspect of the impact of the Research Report and the Short Film internationally, statistics gathered from the PRI website on downloads of the reports, views of the reports and viewer's intended actions are also discussed.

### Evaluation limitations

The training sessions and sensitisation of probation officers to the amended tools and guidelines (referred to by probation staff as 'induction clinics'), were completed by KPAS in mid-February 2017, and the field research for this evaluation was carried out by the evaluator from 27<sup>th</sup> March to 7<sup>th</sup> April. The time between the induction clinics and the evaluation, was therefore, much shorter than initially planned and meant that the new gender-sensitive approach had a minimal time to become embedded before it was evaluated.

Most of the probation officers interviewed for the evaluation had dealt with cases of female defendants since the induction clinics, and those who had not, were almost exclusively male officers. It was emphasised on several occasions by officers, that they would have preferred

the evaluation to take place at a later date, to enable them to assess the amended tools and the consequences of their implementation in a more detailed and informed manner.

Although the Research Report was explained to the implementing probation officers during the induction clinics, none of the officers interviewed had read it or the Briefing Document, nor had they seen the Short Film. Analysis of the resources produced as a result of the Research Report is thus restricted to interviews with international experts and KPAS senior management.

## Phase one findings

Given the financial, temporal and logistical constraints that come with the operationalisation of a pilot study, the research did manage to investigate a wide cross-section of Kenya, including urban and rural areas and those with significant populations of different religions and cultural practices.

The Research Report was Kenya focused and therefore inherently interpretivist, with interviewees consistently expressing how impressed they were with the level of detail uncovered. However, UN experts emphasised the Research Report's usefulness beyond Kenya, due to its close observance of the Bangkok Rules and the Nelson Mandela Rules<sup>5</sup>, and thus the study's replicability. Therefore, the results and methodology can be of interest to those focusing on a positivist approach to comparative criminology. One representative from UNODC explained:

‘Honestly, I have not seen anything to this level of specificity. We (UNODC) are custodians of the Bangkok Rules. We have worked with many countries about promotion and implementation and this is incredibly useful.’

Probation staff interviewed about the resources indicated that they felt complete ownership over the project's creation and outputs and that in no way had it been imposed on them by any external groups. These positive claims are an encouraging indication that the findings and recommendations are authentic and will be genuinely useful for reform in Kenya.

Those who had viewed the Short Film had great praise for its effectiveness, with special emphasis on its ability to leave an enduring impact on the mind of the viewer. By the time the evaluation took place, PRI's Middle East and Africa Office had already used the Short Film as a key training resource for a project in Tunisia to promote alternatives to imprisonment, and UN staff stated that they intended to do the same. While Kenyan probation officers were not the target audience for the Short Film, interviewees were unanimous in suggesting that it would also be useful in Kenyan domestic training of probation officers and magistrates to improve gender equality.

The issue for both the Research Report and the Short Film, is that while they have been found to be very relevant and effective at communicating key issues, the impact has been limited

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<sup>5</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) were adopted by UN General Assembly resolution 70/175 on 17<sup>th</sup> December 2015, replacing and updating the original 1955 Standard Minimum Rules for the Treatment of Prisoners (SMRs), after developments in human rights and international law. Preliminary Observation One notes that the Rules ‘are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management. See UN Assembly, 2015.



by the number of people accessing them. The potential for further impact of the research within Kenya is great, and although as yet unrealised, it is unrealistic to expect changes at the governmental or judicial levels at this stage, without a specific strategy to engage these parties.

All those interviewed believed that the findings of the Research Report would be valuable to probation officers adopting a gender-sensitive approach (even if this was the Briefing Document<sup>6</sup> created as an overview of the findings, rather than the whole report) and for policy makers in Kenya and beyond.

The recommendations from the Research Report were extensive and covered a wide range of topics, including legislation and policy, sentencing, allocation and supervision of CSO placements, training and documentation. As well as praising the detail, participants were also particularly positive about the helpfulness of the breakdown in recommendations by stakeholder group. The Kenya Probation and Aftercare Service (KPAS) were the stakeholders planning to implement recommendations immediately as part of phase two of the project and the decision on which areas to focus on is explained below.

## Phase two findings

### Relevance

The Research Report delivered a variety of recommendations and therefore, Phase Two could have addressed several different issues. The decision to focus on improving the gender-sensitivity of the pretrial processes was explained by Mr Clement Okech, Deputy Assistant Director of Probation, KPAS:

‘We chose to focus on the pre-sentence report as this is the main report used by probation officers and is the bridge with the magistrate. With the resource constraints of the project, we strategically chose this report as we felt that it was the best opportunity to highlight the issues of women and connect with the court.’

Following the recommendations of the Research Report, KPAS worked with PRI and international experts to amend the ‘Pre-sentence Report’ structure and the ‘Guidelines for Social Investigations and Presentence Reports’, used by probation officers, with the aim of improving the gender-sensitivity of the process. Amendments included changes to the structure of reporting so that more detailed information could be collected and a narrative flow facilitated. Focus moved away from gender-neutral standpoint to ensure questions were asked that could reveal important gender related information. Guidance was also developed to emphasise the importance of all aspects of the interview process, including the environment that the interview takes place in and the manner of questioning. After amendments were agreed by all parties, two pilot locations of Kisumu and Nakuru were identified and the implementation began.

All probation officers questioned about the relevance of implementing the amended tools asserted that the training and amendments were a positive step and several gave examples of how it would benefit their clients. The Nakuru Regional Probation Coordinator pointed out

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<sup>6</sup>Briefing Document: Community service and probation for women: Lessons and recommendations based on a study in Kenya. Available: [https://cdn.penalreform.org/wp-content/uploads/2016/12/PRI-Kenya-report-summary-briefing\\_WEB\\_rev.pdf](https://cdn.penalreform.org/wp-content/uploads/2016/12/PRI-Kenya-report-summary-briefing_WEB_rev.pdf)



that if the approach had been in place previously, then some issues could have been avoided and explained:

‘Sometimes we have had a lady who we didn’t know was expecting, and it wasn’t until her belly got big when she was in prison that we realised. If our officers had been sensitised, then it could have been prevented.’

## **Effectiveness**

Training for implementing probation officers took the form of ‘induction clinics’, completed by senior probation staff, who travelled to the pilot locations to speak to officers in their own probation stations. The induction clinics broadly covered three areas: an overview of the Bangkok Rules and why they are important; an overview of the research report findings; and an introduction to the amended tools and the relevance of the tools to supervising female offenders.

Some methodological limitations were revealed in terms of consistency of the induction clinics. The clinics varied in length from between two hours to half a day, depending on senior probation staff availability and the accessibility of the probation stations. In some cases, judicial officers were sensitised, but this was opportunistic, rather than a part of the planned strategy. The induction clinics would have benefited from distribution of Research Report findings, or the briefing document, which were created to highlight key findings, yet the project team noted that there were not enough copies available to do this.

Probation officers highly valued the opportunity to discuss real examples of clients’ reports and recommendations for how to adapt their approach. However, officers across both counties suggested that a greater level of discussion on practical challenges or in-depth case studies would have been valuable. One officer noted:

‘It needs to be more intensive. It was a little rushed and there was more to discuss. (...) It’s important that it’s an ongoing process and not just one day, otherwise it can appear more of a ‘PR thing’ rather than serious, deeper impact needed to give the weight it deserves.’

Probation officers indicated that there had been a great variety in terms of previous knowledge about gender-sensitivity among officers, and reported that the training was very effective at improving the understanding of the concept and its importance for the justice context. One officer from Maseno, Kisumu County, explained:

‘Now I am able to realise why women offend. Before I would just generalise and not look at the background, but now I see there is a reason I should focus on this.’

A clear theme that emerged in the feedback from probation officers was that they reported that knowledge of the UN Bangkok Rules gave them an evidence-based reasoning to change their behaviour. Many officers explained that they had felt that they had always intuitively treated female clients differently, but the training had given them the knowledge to make that difference appropriate and effective and the justification to do so. One officer noted, ‘I feel empowered because you don’t just make recommendations, but you have the backing for this justification.’

The induction clinics addressed the line and manner of questioning of female clients and probation officers observed a strong improvement in relationships as a result. A probation officer from Molo, Nakuru County remarked:

‘I used to treat them just as offenders. Now I have a better understanding I am more sympathetic and find out who they are and why they may have committed offence. The women have been more accepting of my questions and open-up more. If you show that you want to understand they are more friendly and give more details about their life.’

In terms of the ease of use of the newly amended pre-sentence report, probation officers at a focus group in Maseno, Kisumu County observed:

‘Changes have made the summary more detailed so that it holds the important facts, so that a magistrate can read it and see information easily (...). I also like the suggestion of writing the reports in a way to guide magistrates as much as possible to consider non-custodial options.’

A question of whether the changes in approach led to an impact on the workload of the probation officers remains, as there were differing opinions voiced by officers. Some officers claimed that more trips to the community and a greater depth in interviewing resulted in a longer process, yet other officers felt that the amended tools sped up the system and that their duties had always included visits to the community. One officer in Nakuru did note that there are periodical fluctuations in the amount of probation cases:

‘While three cases may be normal, other times in the season we have ten pending in a week. In December, with festivities, people are arrested more, as well as at election time. Also after the courts come back from leave’.

This clearly suggests that a more extensive period of evaluation is required to take into account such fluctuations.

An improvement in interviewing also led to an improvement in the quality of pre-sentence reports, as more substantial and relevant information was revealed. An officer from Winam, Kisumu County explained:

‘Before I would have brushed over issues and used closed questions, not taking time to probe and find out details. Now I engage them more and use open ended questions – giving time to express themselves and explain. I also specifically find out gender related issues – not just criminal. For example, I would never have asked about reproductive health before.’

While the discussion of reproductive health may seem out of place in a pre-sentence interview, it is actually a good example of how officers took into consideration factors that previously had been seen as unnecessary. Officers explained the gender-related importance of asking about reproductive health with two key points. Firstly, they observed that women often have many children and commit crimes in order to provide for them. It was explained that many women are unaware of their rights to access to safe, effective, affordable methods of fertility regulation of their choice, and that an outcome of being able to effectively plan their pregnancies, was that they were more able to effectively plan economically. Indeed, the Research Report found that 67% of women interviewed had said they ‘had offended in order to earn a living and to support their families’ (PRI, 2016a p14) and that 85% of the women interviewed had children, and of those, 31% had more than three children (ibid p13)<sup>7</sup>.

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<sup>7</sup> While there has been a notable decline in fertility within Kenya, what the headlines often miss is the fact that there are clear disparities by household wealth. Askew et al show that despite the rapid decline in fertility, the most underserved in society did not follow this new norm, to the extent that ‘by

Secondly, if a woman is pregnant while passing through the justice system, it is important for the officers to be aware, so that this can be taken into consideration at all stages of the process.

This level of understanding at the interviewing stage did also appear to transfer to the reporting. The increase in quality of reporting was supported by magistrates, who indicated that both the level of detail and depth of the reports had improved. A magistrate based in Maseno said:

‘I have received much more detailed pre-sentence reports, including details from neighbours and family and exactly who they are, rather than before when they didn’t say much about them or agencies involved.’

Several probation officers identified magistrates as a challenge, as one explained:

‘I may spend a week on a case. Go to the community, speak to local administration, parents, neighbours and community at large. I can put in a quality report and present it, but they don’t even look at it and give a custodial sentence’.

If magistrates have not been sensitised to the gender-sensitive approach or do not value the pre-sentence report process, the quality of the report becomes redundant. The specific training of magistrates was outside the scope of this pilot study, but feedback from probation officers clearly identifies this as an activity to include in any further implementation.

This point is underlined by the fact that magistrates that had been sensitised about a gender-sensitive approach, did start to prioritise women’s cases in order to lessen the time they spent on pre-trial detention. An officer noted the change:

‘We are now receiving more referrals from court as their confidence in us has increased and information sharing with magistrates has improved due to the quality of our reports.’

This increase in confidence, may have then influenced the workload of probation officers due to an increase in expectation from magistrates. One officer from Nakuru County observed:

‘One-day reports do not have the same quality. It means we don’t involve all the others who don’t come to our office. A two to three-day period would bring better quality.’

Several probation officers also reported changes in the outcomes of trials for women. They believed that, at least in part, this was because they were now recommending non-custodial sentences for crimes that until recently they had recommended prison sentences. One officer noted, that since the training, she had completed five exhaustive investigations into cases of women, and that all had led to a recommendation for non-custodial sentences. The officer explained that this was significant because prior to the training, it would have been highly likely that the same five offences would have led to custodial sentences, or fines that the

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2014, the poorest quintile was significantly different, with a TFR [Total Fertility rate] up to 3.6 children higher than the majority of the population (6.4 vs. 2.8–4.7)’ (2017, p291–292). Therefore, this gives strength to the argument that those who are economically less well-off and commit subsistence-based crimes could benefit from greater knowledge of and access to reproductive health services.

women would have been unlikely to be able to pay, thereby leading to prison sentences. For example, the officer estimated that in a case of brewing illicit liquor, which received a six-month probation sentence, the women would normally have received to a fine of KES 30,000 (GBP £224 or USD \$287<sup>8</sup>) or a three-month prison sentence. Another example given was a case of 'fixing electricity without authority', which the officer estimated would have led to a fine of more than KES 100,000 (GBP £747 or USD \$956) or prison sentence of more than 3 years, yet in this case was finalised with a two-year probation order.

## **Sustainability**

Despite it being a pilot project, probation officers were adamant that they preferred and saw the value of the gender-sensitive approach. Officers in Maseno, Kisumu, declared that they had no intention of going back to previous processes, with one stating:

‘We have already adopted these and there is no going back. As an office, we hold case conferences, so we discuss cases as a team and assist each other to find a way forward to rehabilitate the offenders.’

The pilot was specifically targeted at probation officers, yet these officers do not exist in a vacuum and the sustainability of the work they implement is also reliant on other actors. For example, many officers called for better engagement with judges and magistrates.

Probation officers were manifestly positive in the new approach, but were equally frustrated with the absence of support available to women, once their needs had been identified. For example, it was assessed that many of the women would benefit from counselling and family planning, but that without programmes on which to place the women, it seemed pointless to the officers. Assessment of provision of support infrastructure available to women offenders, was also beyond the scope of the project, but evaluation findings suggest that further steps are needed to ensure that support is provided to those who require it and so that women are not criminalised for their circumstances.

## **Unexpected outcomes**

Interviewing of probation officers revealed that some staff had created local initiatives in order to enhance the effect of the training. The Country Probation Director created several summary documents of key learning points to help supplement the larger guidelines document. Officers praised these documents as easily usable on a day-to-day basis, as well as the regional meeting that was held so that all officers could share their experiences of the new approach. In Kisumu, the Officer in Charge of Kisumu court station used the monthly Court User Committee (CUC) as an opportunity to sensitise many relevant stakeholders on the project by explaining the approach and its benefits, which was also received positively.

While these initiatives were not planned, they were hugely appreciated by staff and were effective in communicating the philosophy on which this project is based. The local initiatives also highlighted what can be achieved with a modest budget and committed staff.

There were also unexpected positive outcomes for male clients. Several male probation officers explained that they had not interacted with a female client as there had always been female officers present, but that they applied the philosophy behind the new approach to the male clients. A male officer explained:

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<sup>8</sup> Exchange rate calculated using Oanda Currency Converter and rounded to nearest GBP or USD.  
<https://www.oanda.com/currency/converter/> Accessed 25/04/2017

‘Now I capture more details that I had presumed previously to be minor and unimportant. I don’t just look at family background of the man, but fully report on other relevant details’.

## Conclusions

The project goal was to provide probation officers with the tools and guidance required to facilitate a more gender-sensitive approach to working with women completing non-custodial sentences and this was largely achieved.

Whether the amended tools had a direct influence on the workload of probation officers facilitating the approach is as yet unclear, however, it does appear that the changes to conducting pretrial assessments has led to improved relationships with clients, quality of reports, and use of community-based sentences. Magistrates have confirmed the increase in quality and further assessment of the pilot regions may reveal whether the increased confidence in pretrial reports leads to unreasonable expectations about the speed of quality reports. Currently, the opinions on the new approach from implementing stakeholders were overwhelmingly positive.

Probation officers appreciated the context specific advantages of completing the induction clinics in probation stations, and some officers highlighted ways of improving the induction clinics including summary documentation and increased depth of discussion.

Although many officers reported that they had previously made adjustments for female clients, all were positive in their assertions that the training improved their understanding and implementation. The fact that the approach was underpinned by international standards such as the Bangkok Rules was greatly valued by many officers, both in terms of having confidence in the approach and in convincing others of its value.

The long-term adoption of a gender-sensitive approach will be more likely as more stakeholders are sensitised to the value of the approach and at this early stage, the overt enthusiasm of the probation offices for the amendments is a good indicator of their sustainability.

## Discussion

The project’s overall objective was to: ‘develop and pilot gender-sensitive CSOs and probation orders based on evidence and consultation with women offenders’.

The pilot activities focused on and were effective at creating a gender-sensitive approach to the process that leads to the awarding of CSOs and probation orders and the planning of them, but further implementation and study is required to determine whether this approach translates into improved experiences for women completing the non-custodial sentences. The project objective was therefore out-of-step with the final implementation plan.

Further investigation into gender-sensitivity at the non-custodial stage is therefore strongly encouraged, as studies elsewhere on similar issues (almost exclusively in Western contexts) have shown encouraging signs. A study from the USA showed that women in Washington completing substance misuse programmes that were more gender-sensitive and who also completed treatment ‘had a significant reduction in overall arrests from two years before - to two years after treatment, above and beyond the reduction in arrests due to treatment alone’ (Kissin et al., 2014). Whether this association of improved outcomes and a gender-sensitive approach to the rehabilitation process is realised in the Kenyan context clearly warrants study.

The need for such research and its possible benefit to the wider South and East regions of Africa is also illustrated by an examination of the situation in South Africa:

[W]here sentence plans, including the determination of rehabilitation programmes, are drawn up on the basis of an initial admission interview with incoming offenders. The design of the process resulted in women only indicating recent events and issues directly related to their arrest, rather than violence and trauma dating back further' (Huber, 2016, p35–84).

However, the resources created and activities piloted received positive feedback in almost all quarters. It is clear that consultation with women took place in order to create the initial Research Report and KPAS staff were overtly proud in their ownership of the project, with no hint of imposition from external forces. Ownership over the project displayed by all KPAS staff interviewed also indicates that the overt and conscious inclusion of the host country's probation leaders is a positive and commendable model.

While accessibility of the Research Report and Short Film was an issue, those who had read or watched them were full of praise for the content and quality. Further promotion of both resources is recommended, as the relevance and value of a gender-sensitive approach are clearly communicated.

The choice to amend existing pre-sentence report and guidelines was strategic and received well by probation officers. Robertson and Watson explored the idea of creating 'parallel gender-specific guidelines' for sentencing in the UK, with the expressed aim of achieving equality at sentencings, and thereby contributing to a reduction in the female prison population (2017, p546–567). They explain that there are normative issues with this approach as gender is only relevant 'when it is linked to legally relevant factors such as risk of reoffending, sole or primary caregiver status, equality of impact or some other legitimate consideration at sentencing' (Roberts and Watson, 2017, p546–567). They conclude however, that amendments to sentencing guidelines highlighting factors that distinguish female offenders is preferable. This paper looks at a project amending pre-sentence reporting guidelines, rather than sentencing guidelines, but the principle remains the same, in that the circumstances of the individual must be taken into consideration and this was an effective aspect of the model implemented.

Indeed, by focusing on the individual, probation officers in this study revealed that they believed that the gender-sensitive approach also improved outcomes for men.

The second phase of the project was designed specifically using the guidance from the evidence base collected in the Research Report and the project as a whole was praised by international sector experts for its close adherence to international standards such as the UN Bangkok Rules, meaning that the lessons are applicable to a global audience. Indeed, the probation officers themselves valued the knowledge of these globally recognised standards, which gave them the confidence to implement gender-sensitive processes now moved positions and no longer in custody manager role. Waiting to hear from him manager about who to speak to.

Officers cited convincing examples of women responding more openly in interviews, leading to the collection of information that would otherwise have been overlooked, as well as community-based sentences being given when previously a custodial sentence or an unachievable fine would probably have been given.

Naturally, some officers have taken longer to adapt to a new approach and require further coaching and support. The evaluation uncovered no evidence to suggest that probation teams are unable to manage the current caseload with the improved approach in place, and all parties are united in identifying an increase in quality. Longer-term monitoring and evaluation will be required in order to assess seasonal fluctuations in relation to the number of cases handled by officers. The management of magistrates' expectations will also need to be a consideration, to ensure probation officers have sufficient time to complete quality reports.

Given the short time between the release of the research report and this evaluation, it is difficult to determine the long-term impacts and sustainability of those impacts. However, there are positive signs that KPAS intends to act on specific recommendations from the Research Report. An integrated strategy to embed the recommendations and engage other key stakeholders including politicians and the judiciary will be required to ensure sustainability of the findings in Kenya. Members of international organisations have also indicated intentions to use the content as a good practice example of implementation and the structure as a model to replicate elsewhere.

The project genuinely broke new ground in terms of testing the implementation of a gender-sensitive approach to the pre-sentence phase. There are strong indications that the project activities directly improved the outcomes for women and increased the gender-sensitive nature of the approach taken by probation officers. The project contains information valuable both to those who take an interpretivist stance towards criminological investigation and are interested specifically in the Kenyan context, but also to positivist minded researchers due to the creation of an easily replicable model that can be scaled-up within Kenya and applied to other countries globally. Further evaluation is encouraged to assess long-term effectiveness and sustainability of the activities and the impact on women completing non-custodial sentences.

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